

IN THE IOWA DISTRICT COURT FOR POWESHIEK COUNTY

STATE OF IOWA
Plaintiff

v.

CRISTHIAN BAHENA RIVERA
Defendant.

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Case No. FECR010822

MOTION TO SUPPRESS

COMES NOW, the Defendant, through counsel and states:

1. The Defendant has been charged with the crime of murder, first degree in violation of Iowa Code Section 707.2.
2. On or August 20, 2018, law enforcement went to the Defendant's work at Yarrabee Dairy Farm.
3. Law enforcement suspected the Defendant in the death of Mollie Tibbetts ("Tibbetts").
4. Law enforcement approached the Defendant and asked him if he spoke any English. Transcript 8/20/2018 AT DAIRY FARM, page 2.
5. The Defendant indicated that he did not speak any English other than the basics. Transcript 8/20/2018 AT DAIRY FARM, page 2.
6. Law enforcement then said to the Defendant, "would it be possible for us and the officers here to search inside your car?" Transcript 8/20/2018 AT DAIRY FARM, page 20.¹

¹The interview quoted in this Motion is from a transcript produced by the State. Any translation was transcribed by an interpreter either employed or hired by the State of Iowa. Funds have been approved to hire an expert to independently transcribe this interview. The interview provided by the State (and quoted in this Motion) indicates that English is italicized and Spanish is in regular font.

7. Law enforcement never advised the Defendant that he would have the right to decline to consent or decline to cooperate with officers.
8. The Defendant consented to the search of his car. Transcript 8/20/2018 AT DAIRY FARM, page 20.
9. Law enforcement #1 next said, *“yes, it does. Uh, right now...probably, uh...we have a professional interpreter...not me. Uh, and another officer in their office...in Montezuma. Is it possible that you could come with us to talk to them about some other questions? Is it possible? Uh, do you...would you like—he said, “yeah”. Would you like him to, um, ride with us?”* Second law enforcement #2 said *“Yes. We’ll, we’ll ride him down and then we’ll figure it out how...that will work.”* Law enforcement #1 *“So, you can come with us, in our car and then, uh...they will bring you back over here.”* Transcript 8/20/2018 AT DAIRY FARM, pages 22-23.
10. The Defendant indicated that was fine but he needed permission from his boss.
11. Law enforcement next approached the Defendant’s boss about the Defendant going to the Poweshiek County Sheriff’s Office in Montezuma for an interview. Transcript 8/20/2018 AT DAIRY FARM, pages 23 and 24
12. The Defendant’s boss indicated that was fine but that he was going to involve an attorney. The Transcript of that portion of the interview involving the is below. ²

	[VOICES OVERLAP]
UM2:	<i>So, I’ll make the seat... I don’t know, I didn’t drive, so...</i>
UM:	<i>Okay.</i>
UM2:	<i>I’ll figure it out, who... [U/I] I don’t know.</i>
UM:	<i>I did but I...</i>
	[VOICES OVERLAP]

² Portions of this Motion in spreadsheet form are directly from the transcript of the Defendant’s interview produced by the State.

UM2:	No.
	[VOICES OVERLAP]
UM:	<i>...only have one (1) front seat available.</i>
UM2:	<i>Okay, we'll figure that out, right? And, so... If he is, uh... If he asked if we have to deal with the boss, let's do that.</i>
UM:	<i>Okay, I'll ask him if he has anything he needs. Uh, it's there anything that you must bring with you? Like, medicine, or...</i>
UM2:	<i>Ask him right away.</i>
UM:	<i>[U/I] Is he able to, um... go down to their office in Montezuma? Uh, for some further questions?</i>
UM3:	<i>Uh, that's okay with me.</i>
UM:	<i>Okay.</i>
UM3:	<i>Yeah.</i>
UM:	<i>That's the question for you. He is okay with it.</i>
UM3:	<i>Okay.</i>
UM:	<i>He wanted to make sure you are okay with it.</i>
UM3:	<i>Yeah, that's fine. Um...I might call, Mahaffey, who is our... farm lawyer.</i>
UM:	<i>Okay.</i>
UM3:	<i>Uh, 'cause otherwise he's not going to have a legal representative.</i>
UM:	<i>Okay. No problem.</i>
UM3:	<i>He can meet you down there.</i>
UM:	<i>Yeah, sure.</i>
UM3:	<i>So...</i>
UM:	<i>Um, they are at the... Poweshiek County.</i>
UM3:	<i>Okay.</i>
UM:	<i>At the Sheriff's Office, there.</i>
UM3:	<i>Okay. I'll call Mike. But, other than that, yeah... that's fine with me.</i>
UM:	<i>Okay, that's fine. He is saying that it's fine and that probably he will call the, I'm just going to tell him you are going to call the attorney, he will call the attorney of...of your company, for you as well. You don't need it but... for him, he wants to.</i>
	[VOICES OVERLAP]
BAHENA-RIVERA:	Can I change my shoes?
UM:	Yes, where are they?
BAHENA-RIVERA:	Right here.
UM:	Yes, that's fine. <i>He is going to throw his tennis shoes on.</i>

UM3:	<i>Yeah, absolutely. He can get everything he needs, if he needs keys or if he needs, uh, to wrap up anything or...</i>
UM:	<i>Uh...I think he's gonna call the farm's attorney to let him know what happened.</i>
UM2:	<i>Okay.</i>
UM:	<i>I'll let you take those, one (1) is signed for the Altima and the other one he is going to sign, so... you shouldn't have an issue with those.... Unless, [U/I] lawyer, so... And you want this?</i>
[END OF RECORDING]	

Transcript 8/20/2018 AT DAIRY FARM, pages 23-24.

13. The Defendant was transported to the Poweshiek County Sherriff's Office. He was interviewed by Officer Pamela Romero (and other unknown officers). He was not Mirandized at the beginning of the interview.
14. In addition to not being Mirandized, the Defendant was never corrected that he had the right to an attorney. He was only told that he did not need an attorney.
15. The Defendant was interviewed by law enforcement for over 12 hours.
16. The interview took place in the evening hours of August 20, 2018, at the end of a full day of work at the Yarrabee Dairy farm. The Defendant typically worked from 5:00/5:30 a.m. to 5:00 p.m. every day. The Defendant worked 13 days of every 15 days. Transcript 17 04 34 465, page 4.
17. During that interview, Officer Romero and another law enforcement officer named Jeff brought up whether or not they had permission to check the Defendant's vehicles and the Defendant's home.
18. Interviewers used leading questions to confirm the Defendant earlier gave permission to search his house and car. Transcript 17 04 34 465, page 44.
19. The Defendant verified he gave consent. Transcript 17 04 34 465, page 44.

20. Law enforcement never advised the Defendant that he would have the right to decline to consent or decline to cooperate with officers.

21. Interviewers further used a leading question to confirm the Defendant earlier gave permission to conduct an interview. Transcript 17 04 34 465, page 44.

22. The interview continued.

23. The interview began with typically casual talk as standard to a law enforcement interrogation.

24. The interview next narrowed in to the Defendant's alleged involvement with Tibbets.

25. When the Defendant denied doing anything wrong, Officer Romero went on to tell the Defendant a story as follows,

ROMERO:	Once I had a co-worker, he was a police officer, and um, he always had problems with the neighbor.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And he had a thirteen (13) year old son. He told me that one time he got home and the neighbor had just bought a new truck... would tell the boy his dad was a pig. So, then he went and scratched the truck.
	[VOICES OVERLAP]
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	... of the year. And the officer didn't know the neighbor was always saying things to the boy. He would tell him, you know how they call cops, pigs?
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	He would tell him that his dad was a pig, that....So then the kid goes and scratches the truck.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And my friend told me, that he went to the house and the neighbor went and told him, that the boy scratched his truck. And that day, he hit his son.
BAHENA-RIVERA:	Mm-hmm
ROMERO:	And he had never hit him. And when he told me he started crying, and he told me he didn't know why the boy did it.
	[VOICES OVERLAP]

BAHENA-RIVERA:	Mm-hmm. Why he did it.
ROMERO:	And then he said that the boy [UI] told him "He calls you a pig." [UI]
	[VOICES OVERLAP]
BAHENA-RIVERA:	To defend him.
ROMERO:	And I don't want that to be the case with you.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Cristhian. I want...
BAHENA-RIVERA:	Much less do I.
ROMERO:	...[UI] something that, that can't help me understand this.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And perhaps I might accuse you incorrectly.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Or other officers might accuse you the wrong way.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Simply because you're not talking, and that's not correct.
	[VOICES OVERLAP]
BAHENA-RIVERA:	Like I told you, all I have...
ROMERO:	Like that little boy.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	You understand me?
BAHENA-RIVERA:	Well I know, that, that uh, perhaps you wanted it to be something, and thereafter, if I wanted to tell you it would be to late.
ROMERO:	Mm-hmm.
BAHENA-RIVERA:	But that's not the case.
ROMERO:	How long has it been?
BAHENA-RIVERA:	Hmmm?
ROMERO:	How long has it been since disappearance of this girl?
BAHENA-RIVERA:	Well it's been about a month, right?
ROMERO:	How many nights has her mom see her empty bed, the rooms.
BAHENA-RIVERA:	Mm-hmm. But like I told you, like you asked me if I can sleep...

Transcript 18 46 05 370, page 35-36.

26. The Defendant told Officer Romero repeatedly that he only saw Tibbetts running.

27. Officer Romero reiterated, the following statements that she was only trying to help the Defendant:

a. "...thank you for trusting me and I want to help you the most that I can."

Transcript 18 46 05 370, page 38,

b. "But, we're going to review it in hopes that I can help you, and understand you," Transcript 18 46 05 370, page 39,

c. "Okay, I'm going to help you, because it seems as though I already have a sense of direction, because of this, right?", Transcript 18 46 05 370, page 41, and

d. "I want to tell you once again, okay. We're here to try to help you." Transcript 18 46 05 370, page 46,

e. "But, I want you to say it Cristhian, that... You can help me understand and so you can help yourself." Transcript 20 27 35 040, page 11.

28. Law enforcement later decided to take a break. There was a long pause. When Officer Romero came back in the room the Defendant was asleep. Transcript 20 27 35 040, page 21.

29. The Defendant was then asked how he was doing and he stated he was sleepy. Transcript 20 27 35 040, page 24.

30. At a later point in the interview Officer Romero stated, "let's help each other out." And an Officer stated, "Cristhian, the evidence doesn't lie." Transcript 22 09 04 680, page 6.

31. Law enforcement then went on to state that they knew that the Defendant killed Tibbetts. Law enforcement stated they knew that and they just needed to know why. The exact conversation is as follows:

JEFF:	Because you don't need to remember the lies.
ROMERO:	Mm-hmm.

JEFF:	Yes? You know what happened.
BAHENA-RIVERA:	If I knew, I would've already told you.
JEFF:	You killed her, right?
BAHENA-RIVERA:	[UI] I didn't kill, no, no, I don't know if I know how to kill people.
JEFF:	We know it, it's not a matter of...
BAHENA-RIVERA:	Mm-hmm.
JEFF:	...of you doing it. It's a matter of why.
BAHENA-RIVERA:	Well, I didn't do anything, no, what reason would I have...
	[VOICES OVERLAP]
JEFF:	It's a matter, we know you did it, Cristhian.
	[VOICES OVERLAP]
BAHENA-RIVERA:	What could be the reason for me to do something like that?
JEFF:	We know, we just need to know why.
BAHENA-RIVERA:	I didn't do it, neither I had a reason to do something like that.
JEFF:	But, you keep lying, you keep lying. Your phone wasn't never here.
BAHENA-RIVERA:	Well, but I'm saying that it did.
	[VOICES OVERLAP]

Transcript 22 09 04 680, page 16.

32. Law enforcement then confronted the Defendant with who would be making the ultimate decision in the case.

JEFF:	I believe that, uh, you're a trustworthy person, right?
BAHENA-RIVERA:	Mm-hmm.
JEFF:	And when we leave this, this room. [BACKGROUND: BEEP]
BAHENA-RIVERA:	Mm-hmm.
JEFF:	<i>Okay.</i> What are we going to think?

BAHENA-RIVERA:	Well...
JEFF:	Because we know, we know that you're not telling us the truth, all the details and at that moment, that is not too hard to remember.
BAHENA-RIVERA:	<i>Okay.</i>
JEFF:	You're not giving us basic information, right?
BAHENA-RIVERA:	Mm-hmm.
JEFF:	That you should...
	[VOICES OVERLAP]
BAHENA-RIVERA:	Know too.
JEFF:	...remember very well.
BAHENA-RIVERA:	Yes, but I'm saying that I didn't do anything to the girl. [CHUCKLES] That's the only thing I can tell you.
JEFF:	But I want to know from here, so I can tell the, tell the other investigators that, that Cristhian is a trustworthy person.
BAHENA-RIVERA:	Mm-hmm.
	[VOICES OVERLAP]
ROMERO:	Mm-hmm.
JEFF:	And that...he's telling us the truth and everything, right?
	[VOICES OVERLAP]
BAHENA-RIVERA:	Mm-hmm.
JEFF:	Because I'm not going to make the decisions here in this case.
	[VOICES OVERLAP]
BAHENA-RIVERA:	Mm-hmm.
JEFF:	I'm here to talk to you in Spanish. Mm-hmm. As well as her...
	[VOICES OVERLAP]
BAHENA-RIVERA:	Mm-hmm.
JEFF:	...but we need to report...
	[VOICES OVERLAP]
BAHENA-RIVERA:	Mm-hmm.

JEFF:	...right? What you're telling us.
BAHENA-RIVERA:	Mm-hmm.
JEFF:	Yes? and I want you to be a trustworthy person.
BAHENA-RIVERA:	Mm-hmm.
JEFF:	I don't know if I can say that.
BAHENA-RIVERA:	<i>Okay.</i>
JEFF:	Because we know you know more. That you're not, you're, you're changing the details. A little bit, right? You're changing the details. But they are not details hard to remember.
	[VOICES OVERLAP]

Transcript 22 09 04 680, pages 32 and 33.

33. Law enforcement later stated, "I know you're lying and I can't go over there and stand up for you. Help me so I could stand up for you and to turn in a good report." Transcript 22 09 04 680, page 34.

34. Officer Romero then went on to say:

BAHENA-RIVERA:	Mm-hmm.
ROMERO:	I want your rights to be valued. Your rights are...
	[VOICES OVERLAP]
BAHENA-RIVERA:	Well, yes. Our rights are the same as everyone's.
ROMERO:	Exactly. But for that reason, I am telling you why we need that information. Because there is information that...
	[VOICES OVERLAP]
BAHENA-RIVERA:	Because I am telling you that...
ROMERO:	If you can give me a report here...it's preferable for you to give it to me here.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	For you to tell it to me in a way that I can...
	[VOICES OVERLAP]
BAHENA-RIVERA:	<i>Yeah.</i>

ROMERO:	... that I can... that they can see because it can be beneficial for [UI].
BAHENA-RIVERA:	Yeah.
ROMERO:	[UI] know the truth.
BAHENA-RIVERA:	Yeah. Well, as I am telling you...

Transcript 23 50 34 320, page 18.

35. Next Officer Romero confronted the Defendant that they found Tibbetts' hair in his car.³

ROMERO:	[BACKGROUND: steps, opens door] Okay, Cristhian. [UI].
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	You are sleepy, right?
BAHENA-RIVERA:	Yes. [CHUCKLES]
ROMERO:	Take off your hat, please. [PAUSE] you know that while we're here they are moving, right?
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	So, um... I do not have very good news for you.
BAHENA-RIVERA:	Okay.
ROMERO:	I got the report that...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	... they found hair.
BAHENA-RIVERA:	In the car?
ROMERO:	Mm-hmm.
BAHENA-RIVERA:	Okay.
ROMERO:	[BACKGROUND: noise] Um... they found hair in your car.
BAHENA-RIVERA:	I don't know what...
ROMERO:	You are tired, I am tired.

³ This statement was untrue. Further lab testing at the Division of Criminal Investigation does not indicate the presence of Tibbett's hair in the Defendant's vehicle.

BAHENA-RIVERA:	[UI] being hair there.
ROMERO:	But there are. I cannot be doing that. I cannot be creating as if...
BAHENA-RIVERA:	Well, I don't know. Honestly, I don't know. I don't know.
ROMERO:	What do you mean you don't know?
BAHENA-RIVERA:	Well, I don't know how there could be hair in the car.
ROMERO:	Look, that's enough. Honestly, that's enough.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Okay? I am not lying to you when I tell you that there is evidence.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	I can bring you the evidence, a lot of them.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Your cell phone [PAUSE] is reporting you at the place when she stopped.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Where she stopped. Now with this. What else can you do with this? What else?
BAHENA-RIVERA:	Well, I didn't do anything. [PAUSE] Well, I don't know... she was not in my car. I didn't do anything to her. honestly, I didn't do anything to her.
ROMERO:	I showed you that girl's hair because you have seen it. It is brown hair.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	That's enough, Cristhian.
BAHENA-RIVERA:	Well, [STAMMERS] my wife and my daughter [STAMMERS] have the same color hair.
ROMERO:	But the hair is different from that of your daughter.
BAHENA-RIVERA:	Well, I said, when... [UI]... [STAMMERS] Well, [UI] be hers.
ROMERO:	Cristhian, that's enough. It has been a long time, that's enough.
BAHENA-RIVERA:	I am telling you, it can be a hair from my wife...

Transcript 23 50 34 320, pages 32 & 33.

36. Officer Romero next said,

ROMERO:	I'm not going to come in here and yell and get the truth.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	[U/I]
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	[U/I]
BAHENA-RIVERA:	Mm-hmm.
	I'm just telling you, they're going to ask you, and they're going to [U/I], and they are going to judge you and [U/I]. And they will be looking at you. [PAUSE] [U/I]
BAHENA-RIVERA:	No.
ROMERO:	[U/I] [PAUSE] Mm? I will give you an advice [U/I]
BAHENA-RIVERA:	No. No.
ROMERO:	No?
	[PAUSE]
BAHENA-RIVERA:	Like, I told you, I saw her but I never did anything to her.
ROMERO:	Mm-hmm. [PAUSE] What, Cristhian?
BAHENA-RIVERA:	No, well... I'm sad...
ROMERO:	Why?
BAHENA-RIVERA:	Because of the situation that I'm in right now.
ROMERO:	What makes you sad?
BAHENA-RIVERA:	The situation that I'm in right now.
ROMERO:	Then, why don't you help yourself?
BAHENA-RIVERA:	How can I help myself? Well, all I had said, I told you.
ROMERO:	You still need to...tell us more.
BAHENA-RIVERA:	Excuse me?
ROMERO:	You still need to tell us more. But you are scared... that how long... how big it is... Are you scared about what you are

	thinking right now? To say [U/I] How big it is that [U/I] It would be better if I reserve it and don't say anything. To see if the problem goes away.
BAHENA-RIVERA:	There is nothing more I can say; that's all I can say.

Transcript 01 32 03 960, pages 5 and 6.

37. Officer Romero next said, "help yourself." Defendant then responded, "how can I help myself?" Romero next responded, "Help yourself, do it for yourself, think about you. Think about your daughter that will need you. Right now, don't you see that little face of that little girl?" Transcript 01 32 03 960, page 8

38. Officer Romero then went on to say:

ROMERO:	We all do. But we have to be men, we have to be women and accept our errors. And accept any outcome. [PAUSE] Mm? [PAUSE] How should I explain it to them? That you stopped? That you didn't stop, and took off and she disappeared at the moment that your car leaves. What do you think about that? [PAUSE] I can't promise you anything, because like I tell you, [U/I]
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	But a lot of time it's the communication...
BAHENA-RIVERA:	Mm.
ROMERO:	...how we communicate [U/I], the words we use. If I go over there and tell them, I see a Cristhian that's regretful, a Cristhian that made a mistake, a Cristhian that's humble. A Cristhian that... made a mistake. A lot of times, the communication, and the report that we give...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	... because the words, words are like [U/I]
BAHENA-RIVERA:	Mm.
ROMERO:	It can cut you [U/I] [PAUSE] So, then... the photo [U/I]
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And who is Cristhian? [PAUSE] [U/I] A Cristhian that's going to face this, or a Cristhian that will continue lying?

BAHENA-RIVERA:	It's like it tell you, I don't know what happened, I don't know what happened.
ROMERO:	Mm-hmm.
BAHENA-RIVERA:	Because I think I have a problem.

Transcript 01 32 03 960, pages 8 and 9.

39. Officer Romero talked to the Defendant about a variety of possibilities. She discussed what possibly could have happened indicating that the Defendant didn't really remember. Officer Romero next said, "you understand what I'm saying? Well, I could say, "this guy needs medical assistance or a specialist", right?" Transcript 01 32 03 960, page 19.

40. The Defendant indicated he woke up at 4:30 the prior morning. Transcript 01 32 03 960, page 26. An unidentified male came into the room and began speaking in English to the Defendant.

41. Officer Romero translated said conversation to Spanish.

42. During that conversation the following was stated:

	[VOICES OVERLAP]
ROMERO:	I think you're scared because you know what happened a little bit.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>But you're afraid to tell us.</i>
ROMERO:	But you're afraid to tell us.
UM2:	<i>And it's okay.</i>
UM:	<i>And it's okay, it's okay to tell us.</i>
	[VOICES OVERLAP]
ROMERO:	It is okay, it is okay to tell us.
UM:	<i>Be... because, you're right. You are in little bit of trouble. And I, I don't know how much.</i>
	[VOICES OVERLAP]
ROMERO:	Because, yes, you're right. You are in a little bit of trouble.
UM:	<i>And I, I don't know how much.</i>

ROMERO:	And I don't know at this moment how much.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>If you are honest with us...</i>
ROMERO:	If you are honest with us...
UM:	<i>... we can talk to the people that make these decisions...</i>
ROMERO:	... we can talk to the people that make these decisions...
UM:	<i>... and let them know that you were cooperative and want to do the right thing.</i>
ROMERO:	... and let them know that you cooperated with us...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	... and want to do the right thing.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>But I can't make you any promises...</i>
ROMERO:	I can't make you any promises...
UM:	<i>... other than let them know you feel terrible for what happened...</i>
ROMERO:	The only thing I can tell you is that...
UM:	<i>... and that you're asking them to consider that.</i>
ROMERO:	... you feel terrible for what happened so they can consider that.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>Because [PAUSE] we all do things that we don't... we wish never happened.</i>
ROMERO:	We all do things that we wish never happened.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>And sometimes the easy way is to try and forget that.</i>
ROMERO:	And sometimes the best way to solve things is to try to forget.
UM:	<i>But we can't forget what happened.</i>
ROMERO:	But we can't forget everything that happened.
UM:	<i>So, the best way is to, is to, be a man and understand that we all make mistakes.</i>
ROMERO:	The only thing we can do is to be a man...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	... and understand our mistakes.
BAHENA-RIVERA:	Mm-hmm.

UM:	<i>And let us start dealing with those mistakes so we can, uh... get that family some peace.</i>
ROMERO:	And let us start to deal with those mistakes so that at least the family has peace.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>And keep in mind...</i>
ROMERO:	Keep in mind...
UM:	<i>... I'm not looking down upon you.</i>
ROMERO:	... I'm not looking down upon you.
UM:	<i>Okay? I don't know you. You could be a good person.</i>
ROMERO:	I don't know you. You could be a good person.
UM:	<i>But, but you had a bad moment.</i>
ROMERO:	But you had a bad moment.
	[VOICES OVERLAP]
UM:	<i>And, and now we need to know [STAMMERS] everything.</i>
ROMERO:	And now we need to know everything.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>'Cause what we want to do is start moving forward with all of our lives, including yours.</i>
ROMERO:	Because we want to move forward with our lives, including you.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>And we can't run from this anymore.</i>
ROMERO:	And we can't run from this.
UM:	<i>We're past that. We can't forget.</i>
ROMERO:	We can't forget.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>Okay? So, I want to trust you. I don't you to, to, uh... tell me you can't remember anymore.</i>
ROMERO:	So, I want to trust you. You can't tell me you do not remember anymore.
UM:	<i>Because there's some things you can remember.</i>
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Because there are things you do remember.
BAHENA-RIVERA:	Yes.
UM:	<i>That will help us and the family.</i>
ROMERO:	That will help us and the family.

BAHENA-RIVERA:	It's like I told you, like...
	[VOICES OVERLAP]
ROMERO:	<i>It's like I told you before, like...</i>
BAHENA-RIVERA:	It's because [STAMMERS] the only thing I remember was...
ROMERO:	<i>The only thing I remember...</i>
BAHENA-RIVERA:	... that [STAMMERS] I was, like, kind of confused.
ROMERO:	<i>I was confused, a little bit confused.</i>
BAHENA-RIVERA:	So [STAMMERS] I remember everything well until that moment.
ROMERO:	<i>I remember everything well until that moment.</i>
BAHENA-RIVERA:	On that curve...
ROMERO:	<i>Where that...</i>

Transcript 03 13 33 730, pages 17-19

43. The interview got confrontational where an unidentified male was yelling at the Defendant.

ROMERO:	I don't know because I don't remember.
UM:	[SIGHS] <i>Cristhian, do I need to give you a third chance?</i>
ROMERO:	Do you want a third chance, Cristhian?
BAHENA-RIVERA:	For what? I'm not letting go of any opportunity they've given me.
ROMERO:	<i>I'm not [STAMMERS] letting go of my second opportunity that you're giving me.</i>
UM2:	<i>Yes, you are. Yes, you are...</i>
	[VOICE OVERLAP]
ROMERO:	[U/I] ...
UM2:	<i>...you are fucking up right now. You are fucking up big time...</i>
ROMERO:	<i>...you're messing up...</i>
UM2:	<i>...stop fucking up.</i>
ROMERO:	<i>...you're messing up...</i>
UM2:	<i>...tell us the truth.</i>
UM:	[STAMMERS] <i>He's getting mad at you. I'm...</i>
ROMERO:	Cristhian...

UM:	<i>...I'm getting close to getting mad.</i>
ROMERO:	We want... we don't want to think that you did it out of malice.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>Because I still want to believe in you.</i>
ROMERO:	Avoid that.
UM:	<i>And I don't want you to give up that second chance.</i>
ROMERO:	Avoid that. Avoid letting them get to the point where they start adding things.
UM:	<i>Cristhian, I can... I can see in your eyes.</i>
ROMERO:	He can... we can see it in your eyes.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>That there's something you're hiding from us.</i>
ROMERO:	That you're hiding something.
UM:	<i>I can tell.</i>
ROMERO:	We can see it, Cristhian...
	[VOICE OVERLAP]
UM:	<i>And you know I'm right.</i>
ROMERO:	And you know we're right.
UM:	<i>And it's really hard to tell me.</i>
ROMERO:	I know it's really hard to say it.
UM:	<i>'Cause it's something you really wish never happened.</i>
ROMERO:	Because you... It's something that you wish never happened.
UM:	<i>And I can convince him...</i>
ROMERO:	And he can convince him...
UM:	<i>...that he's wrong about you and that you're a good person.</i>
ROMERO:	...that he's still wrong about you, about what he's thinking. You're a good person.
UM:	<i>But I can't keep giving you more chances.</i>
ROMERO:	But we can't keep giving you more chances.
UM:	<i>Because it's late.</i>
ROMERO:	It's already really late.
UM:	<i>And we're tired.</i>
ROMERO:	We're tired. You're tired.
UM:	<i>And we've been very nice to you.</i>
ROMERO:	[STAMMERS] We've been nice to you.
UM:	[STAMMERS] <i>And we want to stay that way.</i>
ROMERO:	We want to keep it that way, Cristhian.
UM:	<i>But [STAMMERS] it's time, we have to find that girl.</i>

ROMERO:	But it's time. It's time...
	[VOICE OVERLAP]
UM:	<i>You have to tell us what happened.</i>
ROMERO:	Tell us where she is.
UM:	<i>And it's okay if you can't remember everything.</i>
ROMERO:	And it's okay if you can't remember everything. It's okay.
UM:	<i>It's okay if you...can't tell us everything.</i>
ROMERO:	It's okay if you can't tell us everything.
UM:	<i>Because I understand.</i>
ROMERO:	We understand.
UM:	<i>Because it might be something that's really hard to talk about.</i>
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Because it's something that's really hard to talk about [U/I]
UM:	<i>It is something [STAMMERS] that's very hard to talk about.</i>
ROMERO:	It's something that's very hard to talk about.
UM:	<i>Because for that moment in time...</i>
ROMERO:	Because for that moment in time...
UM:	<i>...you didn't act like yourself.</i>
ROMERO:	<i>...you weren't yourself.</i>
UM:	<i>And you're ashamed of it.</i>
ROMERO:	And you're ashamed of it.
UM:	<i>And you're embarrassed.</i>
ROMERO:	And you're embarrassed.
UM:	<i>Because that's not who you are.</i>
ROMERO:	Because [STAMMERS] that wasn't you. You weren't yourself.
UM:	<i>[STAMMERS] We can't keep... we can't beg you to tell us the truth.</i>
ROMERO:	But we can't [U/I] tell us the truth.
UM:	<i>You're a grown man who knows how to make his life better.</i>
ROMERO:	You're a grown man that can make his life better.
UM:	<i>You're a hard worker.</i>
ROMERO:	You're a hard worker.
UM:	<i>And you can't look yourself in the mirror and say...</i>
ROMERO:	You can't look at yourself in the mirror...
UM:	<i>... "I'm hiding all this stuff."</i>
ROMERO:	<i>... and say "[U/I] I'm lying."</i>
UM:	<i>Because you can't do that anymore.</i>
ROMERO:	Because you can't do that anymore.
UM:	<i>You've done it too long already.</i>
ROMERO:	You've already done it for too long.

BAHENA-RIVERA:	Mm-hmm.
UM:	<i>So, you need to tell us what happened to that girl.</i>
ROMERO:	Tell us what happened to her.
UM:	<i>And we need to go find her.</i>
ROMERO:	And we need to go look for her.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>And then I can tell people that you made a mistake, but you did the right thing...</i>
	[VOICE OVERLAP]
ROMERO:	[U/I] tell people that you made a mistake, but then you did the right thing by telling us.
BAHENA-RIVERA:	Mm-hmm.
UM:	<i>Because then you can... you can look at yourself in the mirror...</i>
ROMERO:	And you're going to be able to look in the mirror...
	[VOICE OVERLAP]
UM:	<i>And I can look at myself in the mirror...</i>
ROMERO:	And we're going to be able to look at ourselves in the mirror...
UM:	<i>...and say "Cristhian, you made a mistake, but in the end..."</i>
	[VOICE OVERLAP]
ROMERO:	[U/I] that you made a mistake, but in the end...
UM:	<i>...but in the end, you did the right thing."</i>
ROMERO:	...you did the right thing.
BAHENA-RIVERA:	Mm-hmm.
UM:	[STAMMERS] <i>And some people will forgive you.</i>
ROMERO:	And people will forgive you.
UM:	<i>And some people will be mad.</i>
ROMERO:	Other people are going to be mad.
UM:	<i>But there's no point anymore.</i>
ROMERO:	But now there [STAMMERS] isn't a point anymore.
UM:	<i>There's no point.</i>
ROMERO:	There's no going back, Cristhian.
UM:	<i>We... we have... we have to... [STAMMERS] we have to be at the end of this.</i>
ROMERO:	We have to finish this now.
UM:	<i>So, let me trust you.</i>
ROMERO:	We're going to trust you.

UM:	<i>And no more lies.</i>
ROMERO:	And no more lies.
UM:	<i>So, we need to know what happened to that girl.</i>
ROMERO:	We want to know what happened...

Transcript 03 13 33 730 pages 28-31

The Defendant then asked to speak only to Officer Romero. Officer Romero indicated to the other people in the room that the Defendant wanted to speak to her alone.

44. Officer Romero then went on to state the Defendant needed to tell her everything so that the males did not come back.

BAHENA-RIVERA:	I'm going to tell you everything... everything I know.
ROMERO:	[STAMMERS] <i>You're going to tell me all you remember? All you know? It's not going to be any more lies? There's not going to be any more games? No games? No lies?</i>
UM:	<i>Do the right thing, okay?</i>
ROMERO:	Do things right.
UM:	<i>The right thing.</i>
ROMERO:	Because I don't want them to come back, <i>okay?</i>
BAHENA-RIVERA:	Mm-hmm. [BACKGROUND: DOOR OPENS AND CLOSES] It's like how I was telling you, everything I know [U/I] ...

Transcript 03 13 33 730 page 31.

45. The Defendant then next went on to ask how it could help him.
46. Officer Romero stated they can help you by presenting you as a person that made a mistake. The following conversation ensued:

ROMERO:	[U/I]
BAHENA-RIVERA:	...how it could help me?
ROMERO:	Mm-hmm.
BAHENA-RIVERA:	Like, how it could help me?

ROMERO:	They can help you by presenting you as a person that made a mistake.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And a person that didn't act out of malice.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	That has a lot to do with it. Because when a person acts like that...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	...it can be considered as [STAMMERS] premeditated, that you had already thought about it, that you already had that malice...
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	...in mind. As opposed to a person that made a mistake.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	And wants to move forward. <i>Okay?</i>
BAHENA-RIVERA:	What's going to happen to me?
ROMERO:	I can't tell you what's going to happen to you, Cristhian.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	What I can tell you... Like they told you before, a person... For example, if you see a person—a picture of yourself, that's how we... and they're going to paint you.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	A person that did wrong. A person that made a mistake. But you are becoming a man, that is acknowledging his mistake...
BAHENA-RIVERA:	Mm.
ROMERO:	...and is ashamed. A humble person that made a mistake but is facing the facts because he is a man.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Not the other way around.
BAHENA-RIVERA:	Mm-hmm.
ROMERO:	If you don't tell us the truth, then they're going to present you as a coward. And I know that you are not a coward. <i>Okay?</i>

BAHENA-RIVERA:	Mm-hmm.
ROMERO:	Now, tell me, Cristhian [U/I]

Transcript 03 13 33 730 pages 31 -32.

MIRANDA VIOLATION/FIFTH AMENDMENT

47. Persons subjected to custodial interrogation must first be informed of their constitutional rights to remain silent and to have an attorney present during questioning. State v. Miranda, 672 N.W.2d 753, 758 (Iowa 2003)(citing Miranda v. Arizona, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966)). They must also be advised that anything they say can be used against them in a court of law and that if they cannot afford an attorney, one will be appointed for them prior to questioning if they wish. Id. at 758-59. If this warning is not given, evidence obtained as a result of a custodial interrogation is inadmissible. Id. at 759.
48. The Fifth Amendment of the United States Constitution provides in part that a person shall not be compelled in any criminal case to be a witness against himself
49. A person is “in custody” upon formal arrest or under any other circumstances where he suspect is deprived of the suspect’s freedom of action in any significant way. State v. Ortiz, 766 N.W.2d 244, 251 (Iowa 2009)(citing Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 1612, 16 L.Ed.2d 694, 706 (1966)).
50. The Defendant worked almost a 12-hour day before being interviewed.
51. Law enforcement then approached the Defendnat while working and asked whether he spoke any English.
52. Law enforcement next asked to search the Defendant’s car. Transcript 8/20/2018 AT DAIRY FARM, page 20.

53. Law enforcement never advised the Defendant that he would have the right to decline to consent or decline to cooperate with officers.

54. Law enforcement then asked the Defendant to come to come down for an interview.

55. The Defendant was not asked any input regarding whether he would be transported by law enforcement or drive on his own. (*Would you like him to, um, ride with us?*) Second law enforcement #2 said “Yes. We’ll, we’ll ride him down and then we’ll figure it out how...that will work.” Law enforcement #1 “So, you can come with us, in our car and then, uh...they will bring you back over here.”

Transcript 8/20/2018 AT DAIRY FARM, pages 22-23.)

56. The Defendant indicated concern with his boss.

57. Law enforcement next approached the Defendant’s boss and talked with him about the Defendant coming to Montezuma for an interview. Transcript 8/20/2018 AT DAIRY FARM, pages 23 and 24.

58. The Defendant’s boss indicated that was fine but that he was going to involve an attorney. The Transcript of that portion of the interview involving the Defendant is below. (emphasis added in bold).

59. The Defendant’s boss indicated that was fine but that he was going to involve an attorney. The Transcript of that portion of the interview involving the Defendant is below. (emphasis added in bold).

UM:	<i>That’s the question for you. He is okay with it.</i>
UM3:	<i>Okay.</i>
UM:	<i>He wanted to make sure you are okay with it.</i>
UM3:	<i>Yeah, that’s fine. Um...I might call, Mahaffey, who is our...farm lawyer.</i>
UM:	<i>Okay.</i>

UM3:	<i>Uh, 'cause otherwise he's not going to have a legal representative.</i>
UM:	<i>Okay. No problem.</i>
UM3:	<i>He can meet you down there.</i>
UM:	<i>Yeah, sure.</i>
UM3:	<i>So...</i>
UM:	<i>Um, they are at the... Poweshiek County.</i>
UM3:	<i>Okay.</i>
UM:	<i>At the Sheriff's Office, there.</i>
UM3:	<i>Okay. I'll call Mike. But, other than that, yeah... that's fine with me.</i>
UM:	<i>Okay, that's fine. He is saying that it's fine and that probably he will call the, I'm just going to tell him you are going to call the attorney, he will call the attorney of...of your company, for you as well. You don't need it but... for him, he wants to.</i>
	[VOICES OVERLAP]
BAHENA-RIVERA:	Can I change my shoes?
UM:	Yes, where are they?
BAHENA-RIVERA:	Right here.
UM:	Yes, that's fine. <i>He is going to throw his tennis shoes on.</i>

60. Not only was the Defendant not Mirandized. He was told he did not need an attorney.

61. The Defendant was subjected to custodial interrogation without being told his Miranda rights.

62. In addition, the Defendant was told he did not need an attorney.

63. The Defendant's Fifth Amendment constitutional right against self-incrimination was violated.

INVOLUNTARY CONFESSION

64. Any alleged confession in this case was involuntary.

65. There are a number of concerning factors in this case:

- a. The language barrier.
 - b. The Defendant's lack of education.
 - c. Law enforcement telling the Defendant he did not need an attorney.
 - d. The Defendant's acquiescence to anything the law enforcement requested from him (indicating he did not believe he had a choice).
 - e. The length of time of the interview and the amount of time the Defendant spent working prior to the interview.
66. "The question whether a confession is the product of a free will under *Wong Sun* must be answered on the facts of each case. No single fact is dispositive. . . . The *Miranda* warnings are an important factor, to be sure, in determining whether the confession is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The temporal proximity of the arrest and the confession, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant. The voluntariness of the statement is a threshold requirement. And the burden of showing admissibility rests, of course, on the prosecution." United States v. Brown, 422 U.S. 590, 603 (1975).
67. The Defendant was taken into custody, not informed of his right to decline to cooperate and told he did not need an attorney.
68. When the Defendant was told he did not need an attorney, law enforcement suspected him in the death of Tibbetts.
69. The Defendant further was offered promissory leniency.

70. Courts and commentators have long recognized promises of leniency can induce false confessions leading to wrongful convictions of the innocent. State v. Madsen, 813 N.W.2d 714, 725 (Iowa 2012).

71. Statements made after promissory leniency are involuntary and must be suppressed. Madsen, 813 N.W.2d at 725.

72. The State has the burden to show by a preponderance of the evidence that an accused inculpatory statement was voluntary. State v. Nolan, 390 N.W.2d 137, 142 (Iowa Ct. App. 1986).

73. “The use of a per se exclusionary rule eliminates the need for the court to attempt to read the mind of Defendant to determine if his confession was induced or made in reliance upon the promise of leniency.” Madsen, 813 N.W.2d at 726.

74. The rule suppressing confessions tainted by promises of leniency deters police from using a tactic that might induce the innocent to confess falsely. State v. Howard, 825 N.W.2d 32, 41 (Iowa 2012) (suppressing confession where interrogator repeatedly inferred to the Defendant that he would receive treatment if he confessed).

75. The Iowa Supreme Court in Madsen said the following on promissory leniency, “An officer can ordinarily tell a suspect that it is better to tell the truth. The line between admissibility and exclusion seems to be crossed, however, if the officer also tells the suspect what advantage is to be gained or is likely from making a confession. Originally the Officer’s statements then become promises or assurances, rendering the suspects statements involuntary.” Id. (finding promissory leniency when a Fort Dodge Police officer mentioned an adverse

newspaper story if the suspect did not give a confession and talked about getting everything wrapped up and the Defendant going on with his life.)

Wherefore, for the above reasons, the Defendant prays that the Court suppress the Defendant's statements and the fruits thereof for the reasons stated above.

CRISTHIAN BAHENA RIVERA, Defendant

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